



TERMS AND CONDITIONS

For Connection and Diversionary Works



Terms and Conditions

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1. Definitions

1.1. The following words and expressions have the meanings set out below unless the context otherwise requires:

- 1.1.1. 'Accepted Design' means the design for Your Contestable Works accepted by the DNO pursuant to clause 2.3.4;
- 1.1.2. 'Act' means the Electricity Act 1989;
- 1.1.3. 'Additional Enhancement Works' means any works additional to Your Contestable Works and the DNO's Works that are for the benefit of other consumers;
- 1.1.4. 'Adoption' means the transfer to the DNO of Your Contestable Works with Full Title Guarantee, and cognate expressions shall be construed accordingly;
- 1.1.5. 'Adoption Certificate' means a certificate issued to signify Adoption of Your Contestable Works on the DNO's standard form;
- 1.1.6. 'Adoption Date' means the date of the adoption of Your Contestable Works by the DNO in accordance with clause 8.2;
- 1.1.7. 'Adverse Ground Conditions' means any site conditions or ground conditions (including archaeological remains, apparatus belonging to a third party, unexploded ordnance and contamination) which prevent or delay the carrying out of the DNO's Works or which render them more expensive to carry out;
- 1.1.8. 'Approved Contractor' means a contractor who has all the necessary skills and competencies and has current approval from the DNO and the Lloyds Register to carry out Your Contestable Works;
- 1.1.9. 'Business Day' means all the days of the week excluding Saturday and Sunday and any public holidays in England and Wales;
- 1.1.10. 'Capacity' means the Import Capacity and the Export Capacity;
- 1.1.11. 'CDM Regulations' means The Construction (Design and Management) Regulations 2015;
- 1.1.12. 'Change of Law' means the coming into force after the date of the Notice or Estimate of any Act of Parliament and any Legislation

made under it, any judgment of the Court that changes binding precedent and any guidance, designation, direction or instruction of any competent authority with which the DNO is bound to or requested to comply;

- 1.1.13. 'Connection Agreement' means an agreement in the relevant form available from UK Power Networks, Income Management, Energy House, Hazelwick Business Park, Crawley, West Sussex RH10 1EX;
- 1.1.14. 'Connection Equipment' means Electric Lines and Electrical Plant provided or adopted by the DNO;
- 1.1.15. 'Connection Point' means the point or points of connection at which electricity may (upon Energisation) flow between the Distribution System and Your Installation, which may be better shown in the Schedule;
- 1.1.16. 'Consents' means any permission, consent, approval or licence (statutory or otherwise) that is required to carry out the DNO's Works or Your Works;
- 1.1.17. 'Contestable Works' means all works described in the Schedule as the Contestable Works;
- 1.1.18. 'Costs' means all expenses and costs incurred including (but not limited to) attributable overheads and any regulated and unregulated margins thereon provided for in the DNO's published Connection Charging Methodology;
- 1.1.19. 'C/T Settlement Metering' means metering where the full electrical current flow in or out of the Premises is metered indirectly by using current transformers to induce a reference current which is then put through the Settlement Meter;
- 1.1.20. 'De-Energisation' means the operation of any switchgear or the removal of any fuse, or the taking of any other step whereby no electrical current can flow to or from the Distribution System through the Connection Equipment to or from Your Installation at the Exit Point and cognate expressions shall be construed accordingly;
- 1.1.21. 'Defects Correction Period' means the period of 2 years from the Adoption Date in relation to Your Contestable Works excluding any Street Works for which You remain liable;
- 1.1.22. 'Distribution System' means the system for the distribution of electricity belonging to the DNO;
- 1.1.23. 'Diversionary Works' means those elements of the DNO's Works identified as such in the

- Schedule;
- 1.1.24. 'DNO' means the Licence Holder who owns Distribution System to which You have requested a connection or who you have requested carries out Diversionary Works (or both) as the case may be;
- 1.1.25. 'DNO's Works' means all of the works described in the Schedule that are to be carried out by the DNO on these Terms and Conditions;
- 1.1.26. 'Electric Line' and 'Electrical Plant' bear the meaning given to those terms by Section 64 (1) of the Act;
- 1.1.27. 'Energisation' means the first occasion of the operation of any switchgear or the insertion of any fuse or the taking of any other step so as to enable an electrical current to flow to or from the Distribution System via Your Works;
- 1.1.28. 'Estimate' means where the letter relates only to the performance of Diversionary Works the Letter, these Terms and Conditions and the Schedule and any documents referred to in them;
- 1.1.29. 'Exchange Rate' means the exchange rate between £ Sterling and the currency in which the DNO or its affiliate is required to pay for the goods and/or services comprised in or required for the DNO's Works and includes any charge made by a bank for effecting or receiving the transfer or changing such currency;
- 1.1.30. 'Export Capacity' means the maximum flow of electricity expressed in kilovolt amperes set out in the Letter that may flow into the Distribution System:
- (a) From Your Site; or
 - (b) From each Premises connected thereto where the DNO's Works provide for more than one Premises to be connected; or
 - (c) Through more than one connection to the Premises where the DNO's Works provide for more than one connection to the Premises.
- 1.1.31. 'Full Title Guarantee' means the covenant for title implied by Section 3 (1) of the Law of Property (Miscellaneous Provisions) Act 1994 save that the words 'other than any charges, encumbrances or rights which that person does not or could not reasonably be expected to know about' shall be deleted in their entirety;
- 1.1.32. 'Force Majeure' means, in relation to either of us, any event or circumstance which is beyond the reasonable control of the Party affected by it and which results in or causes the failure of that Party to perform its obligations under the Notice or Estimate as the case may be. Lack of funds is not an event of Force Majeure;
- 1.1.33. 'Forecast' means any information, projections, data, estimations or forecasts as to future levels of curtailment provided by or on behalf of the DNO to You in relation to the Notice;
- 1.1.34. 'Generating Equipment' means any electricity generating equipment located on Your Site and paralleled to the Distribution System as more particularly described in the Schedule;
- 1.1.35. 'Good Industry Practice' means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the same type of undertaking under the same or similar circumstances;
- 1.1.36. 'GS Payment' means a payment required under the Electricity (Connection Standards of Performance) Regulations 2010 as a result of failure by the DNO to comply with the required standards of performance for connections.
- 1.1.37. 'Guarantee' means a parent company guarantee or bank guarantee as required by the DNO in the form set out in the Schedule;
- 1.1.38. 'Import Capacity' means the maximum flow of electricity expressed in kilovolt amperes set out in the Letter that may flow from the Distribution System:
- (a) Into Your Site; or
 - (b) Into each Premises connected thereto where the Works provide for more than one Premises to be connected; or
 - (c) Through more than one connection to the Premises where the Works provide for more than one connection to the Premises.
- 1.1.39. 'Initial Reservation Period' means the period beginning on the first twelve-month anniversary of the date upon which the Works are completed, and ending on the 31 December that calendar year;
- 1.1.40. 'Lane Rental Scheme' means any scheme for the rental of all or part of the Street operated by a highway authority or similar arrangement introduced pursuant to NRSWA or the Traffic Management Act 2004 that the DNO is required or requested to comply with;
- 1.1.41. 'Land Rights' means an interest in land as

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- specified by the DNO on the DNO's terms and conditions;
- 1.1.42. 'Legislation' means:
- (a) Any Act of Parliament or subordinate legislation within the meaning of Section 21 (1) Interpretation Act 1978; or
- (b) Any exercise of the Royal Prerogative and any enforceable community right within the meaning of the European Communities Act 1972, in each case within the United Kingdom and includes the Licence;
- 1.1.43. 'Letter' means the DNO's letter to You offering to carry out the DNO's Works upon these Terms and Conditions and the Schedule;
- 1.1.44. 'Licence' means the licence (as from time to time modified) issued to the DNO pursuant to Section 6(1)(c) of the Act;
- 1.1.45. 'Licence Exempt Distribution Network' or 'LEDN' means an electricity distribution system that is the subject of an exemption from the requirement for a licence to distribute electricity granted by the Secretary of State pursuant to section 5(1) of the Act;
- 1.1.46. 'Licence Holders' means Eastern Power Networks plc, South Eastern Power Networks plc, London Power Networks plc and UK Power Networks (IDNO) Limited;
- 1.1.47. 'National Terms of Connection' means the terms of connection published from time to time at <http://www.connectionterms.org.uk> or which may be obtained upon written application from: Energy Networks Association, 6th Floor, Dean Bradley House, 52 Horseferry Road, London SW1P 2AF;
- 1.1.48. 'Network System Emergency' means an event arising with or without warning causing or threatening to cause serious disruption within any of the distribution network regions of one or more of the Licence Holders which requires the special mobilisation of resources and facilities and may require further external agency assistance and which is declared by one of the Licence Holders as a system emergency;
- 1.1.49. 'Next Reservation Period' means the next period of reservation of capacity which has not yet commenced whether that is the Initial Reservation Period or the relevant Subsequent Reservation Period;
- 1.1.50. 'Non-Contestable Works' means the work described in the Schedule which may only be carried out by the DNO on these Terms and Conditions;
- 1.1.51. 'Notice' or 'Quote' means the Letter, these Terms and Conditions and the Schedule together comprising the notice under Section 16 A(5) of the Act;
- 1.1.52. 'NRSWA' means the New Roads and Street Works Act 1991;
- 1.1.53. 'Outstanding Capacity' means (if applicable) the Import Capacity less the Import Capacity taken up at the Exit Points that have been constructed as part of the Works and less the import capacity secured under a Subsequent Notice as calculated the DNO;
- 1.1.54. 'Party' means You or the DNO as the case may be. 'Parties' means You and the DNO;
- 1.1.55. 'Plant' means machinery, apparatus, materials, articles and things of all kinds to be provided by the DNO under the Notice or Estimate as the case may be other than its equipment required for the purpose of the DNO's Works;
- 1.1.56. 'Power Factor' the AC power flow has three components: real power (also known as active power) (P), measured in watts (W); apparent power (S), measured in volt-amperes (VA); and reactive power (Q), measured in reactive volt-amperes (VAR).
- The power factor is calculated using the following formula;
- $$\frac{P}{S}$$
- 1.1.57. 'Premises' includes any land, building or structure;
- 1.1.58. 'Price' means the price stated in the Notice or Estimate as the case may be (as varied in accordance with the Notice or Estimate as the case may be) for the carrying out of the DNO's Works;
- 1.1.59. 'Principal Contractor' means the contractor appointed under regulation 5(1)(b) to perform the specified duties in regulations 12 to 14;
- 1.1.60. 'Principal Designer' means the designer appointed under regulation 5 (1)(a) of the CDM Regulations to perform the specified duties in regulations 11 and 12;
- 1.1.61. 'Programme' means the programme prepared pursuant to clause 2.3.6;
- 1.1.62. 'Request to Test and Connect' means a request on the DNO's standard form which can be obtained at <http://www.ukpowernetworks>.

- co.uk/internet/en/our-services/documents/Request_to_Test_and_Connect.pdf or by request in writing to the address for contacting the DNO specified in the Letter;
- 1.1.63. ‘Reservation Application Address’ means UK Power Networks, Projects Gateway, Metropolitan House, Darkes Lane, Potters Bar, Hertfordshire EN6 1AG;
- 1.1.64. ‘Reservation Application’ means (if applicable) a letter addressed to the DNO at the Reservation Application Address headed ‘Reservation Application’ and specifying the DNO’s job number quoted on the Letter stating that you wish to reserve the Outstanding Capacity for the Initial Reservation Period or Subsequent Reservation Period as the case may be and confirmation of the address that You require correspondence relating to your reservation to be addressed and attaching a copy of the Notice including these terms and conditions;
- 1.1.65. ‘Reservation Charge’ means the charge to reserve one kVA of Import Capacity specified by the DNO and set out in the Reservation Information;
- 1.1.66. ‘Reservation Confirmation’ means (if applicable) a letter from You addressed to the DNO at the Reservation Application Address headed ‘Reservation Confirmation’ and specifying the job number quoted on the Letter and confirmation that You wish to reserve the Outstanding Capacity or specified part thereof for the Initial Reservation Period or Subsequent Reservation Period as the case may be in accordance with these terms;
- 1.1.67. ‘Reservation Fee’ means the product of the Reservation Charge multiplied by that portion of the Outstanding Capacity to be reserved;
- 1.1.68. ‘Reservation Information’ means (if applicable) the information provided in writing by the DNO stating the amount of Outstanding Capacity determined by the DNO that is capable of reservation together with a description of how the Outstanding Capacity was calculated together with the Reservation Charge for the Initial Reservation Period or Subsequent reservation Period as the case may be;
- 1.1.69. ‘Reserve’ means to hold Capacity on the Distribution System in accordance with the provisions of clause 20 and cognate expressions shall be construed accordingly;
- 1.1.70. ‘Schedule’ means the information pack and any other documentation attached to or included with the Letter and any other documentation that is referred to in the Letter or the information pack and documentation attached to or included with the Letter;
- 1.1.71. ‘Settlement Meter’ means an electricity meter used to measure electricity supplied by or sold to an authorised electricity supplier;
- 1.1.72. ‘Site’ means the place at which the DNO’s Works are to be carried out;
- 1.1.73. ‘Specified Standards’ means the standards set out in the appendices (as published from time to time by the DNO) to the Electricity Networks Association’s document G81 which sets out the design, materials, installation and other standards applicable to Your Contestable Works and which can be found online at the following address: <http://www.ukpowernetworks.co.uk/products-services/networks/connection-services/technical-information-for-ICPS.shtml>.
- 1.1.74. ‘Speculative Development’ has the meaning given to that term in the DNO’s Connection Charge Methodology;
- 1.1.75. ‘Street’ means any highway, road, lane, footway, alley or passage, any square or court, and any land laid out as a way whether it is for the time being formed as a way or not. Where a street passes over a bridge or through a tunnel the term Street includes the bridge or tunnel;
- 1.1.76. ‘Street Works’ bears the meaning given to that term by Section 48(3) of NRSWA;
- 1.1.77. ‘Subsequent Notice’ means a subsequent notice issued by the DNO pursuant to section 16(A) of the Act and accepted by You or your tenants, occupiers, agents or any independent distribution network operator to carry out additional works in order to connect Your Installation to the DNO’s Works and to make use of the Capacity provided by the DNO’s Works;
- 1.1.78. ‘Subsequent Reservation Period’ means (if applicable) each successive calendar year commencing 1 January following the Initial Reservation Period up to a maximum of ten calendar years thereafter;
- 1.1.79. ‘Terms and Conditions’ means these terms and conditions;
- 1.1.80. ‘Tests’ means those tests specified in the Letter and any other tests relating to Your Works reasonably required by the DNO (including insulation, polarity and phase rotations tests) prior to Adoption;

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- 1.1.81. 'Unilateral Notice' means a notice entered against the title to Your Site to protect the DNO's interest under the agreement by You to transfer or grant the Land Rights to it;
- 1.1.82. 'Unity Power Factor' is attained when the mathematical result of the formulae shown under the definition of Power Factor is 1 (unity), which will occur if a purely resistive load is connected to a power supply;
- 1.1.83. 'Variation' means any alteration of the Works including any addition, modification or omission or change to the timing or sequencing of the carrying out of the Works;
- 1.1.84. 'Whole Current Settlement Metering' means metering where the full electrical current flow in or out of the Premises passes directly through the Settlement Meter;
- 1.1.85. 'Works' means the DNO's Works and Your Works;
- 1.1.86. 'You' means you, your agent sub- contractors and their officers, employees, servants and agents and any reference to 'you' and 'your' shall be construed accordingly;
- 1.1.87. 'Your Contestable Works' means all Contestable works mentioned in the Schedule that You are required to carry out on these Terms and Conditions;
- 1.1.88. 'Your Installation' means all electrical equipment and apparatus not being part of the Distribution System used or to be used by You and connected to or to be connected to the Distribution System;
- 1.1.89. 'Your Site' means that part of the Site within your occupation or control or over which you enjoy use;
- 1.1.90. 'Your Tests' means any Tests that the DNO notifies to You as to be Your responsibility; and
- 1.1.91. 'Your Works' means all works mentioned in the Schedule that You are required to carry out on these Terms and Conditions.
- 1.2. Unless expressly provided to the contrary, any consent required of a Party under these Terms and Conditions shall not be withheld or delayed unreasonably.
- 1.3. The headings in the Terms and Conditions do not form part of them and shall not be taken into consideration in the interpretation or construction of the Notice or Estimate as the case may be.
- 1.4. The word 'including' is to be construed without limitation.
- 1.5. Any reference in the Notice or Estimate as the case may be to the masculine includes the feminine and any reference to the singular includes the plural and vice- versa in each case.
- 1.6. Any reference to a statute shall be construed as a reference to any statutory instrument, regulation, order or code of practice made under it and as any of the foregoing may be amended or re-enacted from time to time.
- ## 2. Your Obligations
- ### 2.1. Your Site.
- 2.1.1. You must notify the DNO upon acceptance of the Notice or Estimate as the case may be the name, postal address, telephone number and email address of the Principal Designer and the Principal Contractor. The DNO will not commence the DNO's Works at Your Site until it has been notified of this information. You shall indemnify the DNO at all times from all liabilities arising from the performance of, or failure to perform, Your obligations pursuant to the CDM Regulations and against demands, actions, proceedings, damages, losses (including legal costs) and expenses which are made or brought against or incurred by the DNO in each case arising from the performance or failure to perform your obligations pursuant to the CDM Regulations.**
- 2.1.2. You must at your expense give the DNO:
- (i) unobstructed pedestrian and vehicular access (including the provision of any load bearing surfaces required by the DNO) to and within Your Site; and
 - (ii) site facilities, including provision of main services, site huts, parking, storage and a secure facilities compound on your site,
- as it shall require to enable it to complete the DNO's Works by the date specified in the Letter for their completion or if no date is stated in the Letter at such time as shall be required by the DNO when programming the DNO's Works.
- 2.1.3. You are responsible at your own expense for the security of all Plant and the DNO's equipment (and that of its sub-contractors) on Your Site.

2.1.4. At the DNO's request You must operate free of charge for the purposes of the Works any suitable lifting equipment belonging to You or under your control that may be on Your Site. You must retain control of and be responsible for the safe working of the lifting equipment.

2.2. Consents/Land Rights.

2.2.1. You must obtain at your expense any Consents for Your Works free from conditions affecting the DNO's execution of the DNO's Works and their subsequent use and which also will allow:

- (i) the DNO's Works to be carried out in a continuous and logical progression; and
- (ii) the Premises to be used for the purpose for which connection to the DNO's Distribution System is required.

2.2.2. Where Your Premises are to be connected to the Distribution System of the DNO in London You must obtain the in principle agreement of the landowner and any occupier of any land (not being a Street maintainable at public expense) to the DNO's installation of any Electric Line and/or any Electrical Plant in their land in the position shown on the plan provided to You by the DNO and upon the terms that the DNO will require. When You have obtained such in principle agreement You must notify the DNO in writing providing the relevant landowner's (and where different its occupier's) name and address and that of their solicitors as it is not until then that the DNO will instruct its solicitors to obtain the Land Rights that it requires from the relevant owner and occupier.

2.2.3. You must provide to the DNO before it carries out it's the DNO's Works, either:

- (i) a copy of the planning permission for Your Works; or
- (ii) if planning permission is not required for Your Works, confirmation of that fact from the local planning authority or unequivocal counsel's opinion of the same.

2.2.4. You must transfer or grant (or procure the transfer or grant of) the Land Rights in relation to Your Site to the DNO with Full Title Guarantee and You agree that until the Land Rights are transferred or granted:

- (i) the DNO may use the area in Your Site required by it for its electricity substation and/or to retain, lay, place, affix, install, maintain and

remove the Electric Lines and Electrical Plant comprised in the Works; and

- (ii) the DNO may register a Unilateral Notice and you will not object to the registration of the Unilateral Notice.

After the Land Rights are registered against the title to Your Site the DNO shall arrange for the removal of the Unilateral Notice.

2.2.5. Energisation will not take place until You have complied with Your obligations under clause 2.2.4 or the DNO has been able to register a Unilateral Notice pursuant to clause 2.2.4 and in either case You have provided the DNO's solicitors with evidence of Your identity as the DNO's solicitors shall reasonably require in the event that You are not represented by a solicitor or licensed conveyancer.

2.3. Your Works.

2.3.1. You must carry out and complete at Your cost Your Works and such other works on Your Site that are reasonably necessary to enable the DNO to carry out the DNO's Works.

2.3.2. Where Your Works include Contestable Works You shall comply with clauses 2.3.4 to 2.3.13 (inclusive) but not 2.3.14 to 2.3.16 (inclusive).

2.3.3. Where Your Works do not include any Contestable Works You shall comply with clauses 2.3.14 to 2.3.16 (inclusive) but not 2.3.4 to 2.3.13 (inclusive).

Your Design of Contestable Works

2.3.4. Unless you have chosen to use the design prepared as part of the DNO's Works, as soon as reasonably practicable following Your acceptance of the Notice or Estimate as the case may be, You shall submit to the DNO Your detailed design for the Contestable Works. Within a reasonable period following receipt of such design, but in any event no later than the time frame set out in the Licence, the DNO shall advise You of its acceptance of the design or of any amendments required to it. You shall promptly carry out any required amendments and shall re-submit the same to the DNO. Once the design has been accepted by the DNO, such design shall be the Accepted Design.

2.3.5. No approval, review or comment, or failure to approve, review or comment by the DNO of or on the design for the Contestable Works or any other matter shall relieve You of any liability whatsoever or any of Your obligations under this Notice or Estimate as the case may be except

where the DNO causes You to be liable under this Notice or Estimate as the case may be. You have sole responsibility for ensuring that the design of the Contestable Works conforms in all respects with the Specified Standards.

Programme for Your Contestable Works

- 2.3.6. As soon as reasonably practicable following your acceptance of this Notice or Estimate as the case may be You shall prepare and provide to the DNO a programme for Your Contestable Works.
- 2.3.7. Prior to commencing to carry out Your Contestable Works and thereafter every 7 days whilst Your Contestable Works are being undertaken, You shall provide to the DNO a works schedule detailing Your Contestable Works on a daily basis that is to be undertaken over the following 14 days.

Carrying out Your Contestable Works

- 2.3.8. You must construct and install or procure the construction and installation of Your Contestable Works and such other works on Your Site that are reasonably necessary to enable the DNO to carry out the DNO's Works:
- (i) In accordance with the Accepted Design and the Specified Standards;
 - (ii) Complying with Good Industry Practice;
 - (iii) Free from defects in condition, materials or workmanship;
 - (iv) Complying with all relevant legislation;
 - (v) Fit for the intended use; and
 - (vi) In accordance with the Programme and in such a manner as will enable the DNO to carry out the DNO's Works in a continuous, efficient and logical progression so that the DNO's Works can be completed and Energisation can take place on or before the date given for completion of the DNO's Works in the Notice or Estimate as the case may be.
- 2.3.9. If You are not an Approved Contractor, you shall procure the construction and installation of Your Contestable Works by an Approved Contractor, and neither You nor that person shall subcontract Your Contestable Works or any part thereof to any person who is not an Approved Contractor. You must notify the DNO in advance of the identity of any Approved Contractor to be engaged in carrying out Your Contestable Works. The subcontracting of any of Your**

obligations under the Notice or Estimate as the case may be shall not relieve You from liability for performance of such obligations.

- 2.3.10. The DNO may inspect and/or test Your Contestable Works at any time. You must permit the DNO to disturb, excavate, move, open or undo Your Contestable Works if reasonably required for the purpose of such inspection and/or testing, and you must provide the DNO with such assistance as the DNO shall reasonably require. You must, at your expense, rectify anything notified by the DNO as not being in conformity with your obligations under the Notice or Estimate as the case may be, and if required by the DNO, You must (at the option of the DNO acting reasonably) not carry out any further works until the works of rectification are completed and approved. Each subsequent inspection required by the DNO must be paid for by You.
- 2.3.11. The DNO may, by written notice, request You to undertake Additional Enhancement Works, and/or to include provision in the Accepted Design for Additional Enhancement Works. Upon receiving such notice, You shall provide a reasonable quotation for doing so, or provide reasonable grounds for declining the request, such reply not to be unreasonably delayed. If the DNO accepts such quotation, You shall undertake such design and/or construction of Additional Enhancement Works on the same terms as, and as if they were part of, Your Contestable Works.
- 2.3.12. Where it would accord with Good Industry Practice for the suppliers or manufacturers of the materials used for Your Contestable Works to provide warranties as to the quality and nature of such materials, then You will use all reasonable endeavours to procure such warranties and upon request by the DNO shall use all reasonable endeavours to assign such warranties to the DNO and/or enforce such warranties against the suppliers or manufacturers.
- 2.3.13. When requested by the DNO You must provide a Guarantee to the DNO within 30 days of such request.
- Carrying out Your Works (where Your Works do not include Contestable Works)**
- 2.3.14. You shall carry out Your Works at your own cost before the DNO begins the DNO's Works on Your Site and they must be of the quality specified by the DNO, comply with relevant Legislation

and be carried out in such a manner that will enable the DNO to carry out the DNO's Works in a continuous, efficient and logical progression so that the DNO's Works can be completed and Energisation can take place on or before the date given in the Notice or Estimate as the case may be for completion of the DNO's Works.

- 2.3.15. The DNO may inspect Your Works and where Your Works are not in conformity with your obligations under the Notice or Estimate as the case may be You must rectify all shortcomings at your own expense. Each subsequent inspection required by the DNO must be paid for by You and shall be carried out after the DNO's receipt in cleared funds of the re-inspection fee.
- 2.3.16. You must ensure that Your Works, and any Premises owned, occupied, controlled or to be constructed by You, are designed and so constructed that the operation of the Distribution System shall not cause any nuisance, inconvenience, annoyance or disturbance to any person using or occupying such Premises or those adjoining it.

2.4. Provision of Information and Assistance.

- 2.4.1. You must give to the DNO, free of charge and within a reasonable time to prevent delay and/or disruption to the DNO's Works, all necessary and relevant data and information in your possession or under your control relating to the DNO's Works, Your Installation, Your Site and Your Works.
- 2.4.2. You are responsible for errors, omissions or discrepancies in drawings and written information supplied by You and shall pay the DNO the Costs it incurs as a consequence of such errors, omissions or discrepancies.
- 2.4.3. You must give at your expense such assistance in connection with the DNO's Works as reasonably requested by the DNO.

2.5. Contamination.

- 2.5.1. It is your responsibility to identify whether Your Site is contaminated and to remove any contamination at your expense before the DNO begins the DNO's Works.
- 2.5.2. The DNO may suspend the DNO's Works while contamination, wherever discovered, is removed and recover from You the additional Costs it incurs as a result of such suspension and (if it shall remove the same) removal.
- 2.5.3. If contamination migrates to or from the Site during or after the DNO's Works You shall

indemnify the DNO against all Costs, claims, demands and liabilities it incurs as a result of such migration other than contamination arising from the DNO's negligence.

2.6. Connection Agreement.

- 2.6.1. In the absence of a Connection Agreement made between You and the DNO relating to the Premises at which the DNO's Works are to be carried out pursuant to the Notice You shall be bound by section 1 of the National Terms Of Connection. You shall be bound also by section 2 of the National Terms of Connection if the Premises for which the connection is to be provided pursuant to the Notice will be measured by Whole Current Settlement Metering and by section 3 of the National Terms of Connection if the Premises for which the connection is to be provided pursuant to the Notice is not an LEDN but will be measured on an un-metered settlement basis (which for the avoidance of doubt is only permitted following specific agreement by the DNO).

- 2.6.2. If the DNO's Works pursuant to the notice are for the making or variation of a connection to a LEDN between which and the Distribution System there is no Settlement Meter You will be bound by section 1 and section 3 of the National Terms of Connection and You are and will remain responsible for ensuring that:

- (i) The owner and, if different, the occupier of any Premises connected to the LEDN do not by any act or omission do anything that will cause the owner and, if different, the operator of the LEDN to breach the National Terms of Connection; and
- (ii) All connections to the LEDN have electricity consumption measured by whole current Settlement Metering, CIT Settlement Metering or (where specifically agreed by the DNO) measured on an un-metered settlement basis.

- 2.6.3. **Subject to clause 2.7.2 neither You nor anyone occupying the Premises for which connection to the Distribution System is to be made pursuant to the notice will have any express or implied entitlement to any Capacity on the Distribution System on and following the 12 month anniversary of completion of the Works beyond that then taken up and used by You and/or such person.**

2.7. Breach of Your Obligations.

- 2.7.1. If You are in breach of any of your obligations under the Notice or Estimate as the case may be the DNO's estimate of the Costs that may be incurred by the DNO as a result of such breach shall be added to the Price and the DNO shall be entitled to such extension of time for the performance of its obligations as reasonably it shall require but in all cases equal at least to the period of delay.
- 2.7.2. If You are in breach of any of your obligations under the Notice or Estimate as the case may be and such breach causes the completion of the Works to be delayed beyond the 12 month anniversary of the date given for the completion of the Works in the Notice You and the occupiers of the Premises for which the connection to the Distribution System is to be made shall lose entitlement to Capacity that You and such occupiers may have pursuant to clause 2.6.3 without further notice to You.

3. The DNO's Obligations

3.1. The DNO's Works.

- 3.1.1. The DNO shall, subject to the provisions of the Notice or Estimate as the case may be, design, supply and execute the DNO's Works with reasonable skill and care but such duty does not extend to determining the existence of Adverse Ground Conditions.

3.2. Conditions

- 3.2.1. The DNO shall not be obliged to begin or continue the DNO's Works (or where relevant, carry out any Tests, or Adopt Your Contestable Works) until:
- (i) It has received the Price (or where applicable the next instalment thereof) and any Costs then due under the Notice or the Estimate as the case may be in cleared funds; and
 - (ii) It has obtained the Land Rights and any Consents on such terms as it shall require to carry out the Works; and
 - (iii) You have obtained the Consents as required in clauses 2.2.1, 2.2.2 and 2.2.3 and have provided copies of them to the DNO; and
 - (iv) You have provided the information required under clauses 2.1.1 and 2.4.1 and You have provided access to the Site in accordance with clause 2.1.2; and
 - (v) You have carried out Your Works in conformity with the Notice or the Estimate as the case

may be and (where applicable in respect of Your Contestable Works) You have provided to the DNO as built drawings of Your Contestable Works that comply with the Specified Standards; and

- (vi) It has given (following satisfaction of the conditions above in this clause 3.2.1) notice required by the Traffic Management Act 2004 and NRSWA and (where applicable) You have given any such notice required in respect of Your Contestable Works and provided a copy of the same to the DNO, and any period required to have elapsed before that part of the DNO's Works is commenced, has elapsed; and
- (vii) Any required reinforcement of the Distribution System and transmission system that does not form part of the Works has been completed; and
- (viii) You have provided the Health and Safety File to the DNO to the extent that You are the Client for the purpose of CDM Regulations

3.3. Consents and Land Rights

- 3.3.1. The DNO shall use reasonable endeavours to obtain, at Your Cost, the Land Rights and the Consents free of conditions that it requires for any of the DNO's Works that are not on Your Site.
- 3.3.2. If the Consents and/or Land Rights that the DNO requires pursuant to clause 3.3.1 cannot be obtained in accordance with its terms, lapse, are terminated or revoked, it may in its absolute discretion exercise its powers under the Act and in such case:
- (i) The DNO may (but shall not be obliged to) exercise its powers under the Act without first having notified You of its intention to do so and without having regard to any comments that You may make;
 - (ii) As a condition precedent to it continuing to use such powers You must pay to the DNO its estimate of the Costs of preparing for and exercising those powers, the costs of proceedings before the Lands Tribunal, and of the compensation that it considers may be awarded by the Lands Tribunal; and
 - (iii) If the DNO's estimates pursuant to (ii) above are too low You must pay the shortfall before it proceeds further. If its estimates are too high the DNO will re-pay the excess to You within 21 days of the conclusion of all proceedings.
- 3.3.3. If within 6 months of your acceptance of the

- Notice, the DNO:
- (i) Does not acquire the Land Rights or the Consents under clause 2.2.4 or clause 3.3.1, or
 - (ii) Is not given a copy of the planning permission or confirmation that planning permission is not required under clause 2.2.3; or
 - (iii) Is not given access by You as required by clause 2.1.2, the DNO may terminate its obligations under the Notice or the Estimate as the case may be. You may make another request to the DNO to make a connection to its Distribution System or divert its Electric Lines or Electrical Plant as the case may be.
- 4. Variations to Works/Your Works**
- 4.1. Either Party may at any time propose Variations by notice in writing to the other Party. Subject to clause 4.6, no Variation shall be effective unless agreed by both Parties in writing.
 - 4.2. As soon as possible after having received a request for, or proposed, a Variation (other than in relation to any required by the DNO under clause 4.6 to which the provisions of clauses 4.1- 4.4 shall not apply) the DNO will notify You:
 - 4.2.1. If, in its reasonable opinion, the Variation will involve an addition to or deduction from the cost of the DNO's Works; and
 - 4.2.2. What it then considers to be the effect upon their completion date.
 - 4.3. The Cost incurred by the DNO in preparing a Variation requested by You shall be added to the Price whether or not You instruct the DNO to proceed with the Variation.
 - 4.4. Within seven (7) days of the DNO's notification under clause 4.2 You must confirm in writing whether the DNO is to proceed with the Variation. The Price shall be adjusted accordingly and any increase in the Price shall be paid with your instruction. Any reduction in the Price shall be re-paid to You within twenty-one (21) days of the later of the agreement of the Variation and receipt by the DNO of a request from You to re-pay such reduction in Price. Where Plant or any work or service has been supplied or is being supplied or an order has been placed for it to be supplied, the Costs of the variation shall be paid by You. Once instruction is given the DNO's obligations shall be deemed to have been modified to such an extent as would enable the DNO to fulfil its obligations without any prejudicial effect upon them.

- 4.5. No Variation shall constitute or be construed as a waiver of any of the Terms and Conditions or obligations of either of us.
- 4.6. If before or during the carrying out of the DNO's Works, any part of the DNO's Works or their means of execution is affected by:**
 - 4.6.1. Force Majeure and/or**
 - 4.6.2. The existence of Adverse Ground Conditions; and/or**
 - 4.6.3. A Change of Law; and/or**
 - 4.6.4. The absence of any Consents for the DNO's Works or by the terms upon which they are granted or an inability to obtain access to any Premises (including those belonging to the DNO); and/or**
 - 4.6.5. The DNO's existing ducts being unable to be utilised; and/or**
 - 4.6.6. Reinforcement works required to the transmission system;**
 - 4.6.7. Any Legislation which effects an event for which emergency Regulations have been made under the Civil Contingencies Act 2004; and/ or**
 - 4.6.8. Industrial action by the DNO's employees or its agents except where such industrial action is solely limited to the employees of the DNO; and/or**
 - 4.6.9. A Network System Emergency that causes the DNO (or its affiliates) to re-direct its resources and thereby prevents it from completing action required by regulations under which GS Payments may be required; and/or**
 - 4.6.10. A variation or termination of an agreement referred to in clause 6.2.4,**
The DNO shall be entitled to require a Variation to take account of such circumstances.
- 4.7. Any Variation required pursuant to clause 4.6 shall also take into account:
 - 4.7.1. Any increase or decrease in the Cost to the DNO consequent upon such circumstance or event and such Cost shall be added to or deducted from the Price.
 - 4.7.2. The date for completion of the DNO's Works which shall be extended by such time as the DNO considers reasonable but in all cases equal at least to the period of delay, except

where an event described in clause 4.6.8 occurs, in which case the DNO shall only be entitled to an extension of time.

- 4.8. If the DNO requires a Variation in accordance with clause 4.6 You shall enter into the Variation and pay to the DNO any increase in the Cost within 10 Business Days of receiving the notice from the DNO requiring the Variation or such later date as the DNO may state in the Estimate. If You do not enter into the Variation and pay any increase in Cost to the DNO, the DNO shall be entitled to terminate the Notice or the Estimate as the case may be in accordance with clause 15.**

5. Hours of Work

- 5.1. You may request that the DNO's Works be carried out at times other than the normal working hours (08.00-16.30 Monday to Friday, public holidays excepted). The DNO may carry out the DNO's Works outside normal working hours if in the circumstances it shall be practicable to do so and its estimate of the Costs of doing so shall be added to the Price and be paid by You in advance of it undertaking such work. If the DNO's estimate is too low it will require that You pay the shortfall of any re-estimate made by it before it proceeds further. If its estimate is too high it will repay the excess to You within 21 days of its completion of that element of the Works to which such estimate related.

6. Payment

6.1. Terms of Payment

- 6.1.1. You shall pay the Price at the time(s) stated in the Notice or the Estimate as the case may be.
- 6.1.2. If the DNO becomes entitled to claim: Costs; an indemnity under these Terms and Conditions; or any other sum, it will submit an invoice to You and You must pay it within thirty (30) days of its date or before Energisation, whichever is the sooner.
- 6.1.3. For the purposes of the Housing Grants Construction and Regeneration Act 1996 (and this clause 6) a payment becomes due fifteen (15) days after receipt of an invoice by You ('payment due date') and final date for payment shall be fifteen (15) days after the payment due date ('final date for payment').
- 6.1.4. You shall give notice to the DNO not later than 5 (five) days after the payment due date (determined in accordance with clause 6.1.3

above) specifying the amount (if any) of the payment made or proposed to be made, and the basis on which the amount was calculated.

- 6.1.5. Unless You have served notice under clause 6.1.6 You shall pay to the DNO the sum referred to in Your notice under clause 6.1.4, or if you have not served a notice under clause 6.1.4 the sum referred to in the invoice referred to in clause 6.1.3) (the 'notified sum') on or before the final date for payment.
- 6.1.6. You may give written notice to the DNO not later than 1 (one) Business Day prior to the final date for payment (determined in accordance with clause 6.1.3) that You intend to pay less than the notified sum (a 'pay less notice'). Any pay less notice shall specify the sum that You consider to be due on the date the notice is served and the basis on which that sum is calculated.
- 6.1.7. If payment of any sum payable under these Terms and Conditions is delayed past the final date for payment, the Party entitled to payment is entitled to receive interest on the amount unpaid during the period of delay. The interest shall be at the rate of 4% per annum above the base rate of HSBC Bank plc and shall accrue from day-to-day compounded quarterly. Both Parties are entitled to interest without formal notice and without prejudice to any other right or remedy. The DNO shall not pay interest or give credit for interest received on any element of the Price paid by You in advance of the Works.
- 6.1.8. If You fail to make any payment to which the DNO is entitled, the DNO shall be entitled:
- (i) To stop the DNO's Works until the failure has been remedied, by giving seven (7) days, notice to You in which event the Costs of any demobilisation and of the resumption of the DNO's Works shall be paid before resumption of the DNO's Works; and/or
 - (ii) To terminate the Notice or Estimate as the case may be in accordance with clause 15.1.1 whether or not the DNO has previously stopped the DNO's Works under this clause 6.1.8.
- 6.1.9. All amounts becoming due under the Notice or Estimate as the case may be shall be exclusive of Value Added Tax which, subject to express provision to the contrary, shall be payable in addition thereto and at the rate prevailing at the date upon which payment is due.
- 6.1.10. If the DNO's Works described in the Notice

include or comprise Diversionary Works, that element of the Price identified in the Notice as being referable to the Diversionary Works is an estimate only. You will bear all Costs suffered or reasonably incurred by the DNO in performing its obligations in this Notice in relation to the Diversionary Works.

- 6.1.11. If You are a Highway Authority, a Bridge Authority or a Transport Authority (as defined by respectively Sections 86(1), 88(1) and 91(1) of NRSWA) carrying out major highway works, major bridge works or major transport works (as defined respectively by sections 86(3), 88(2) and 91(2) of NRSWA) which affects or may affect the DNO's Apparatus (as defined by Section 105(1) of NRSWA) that is in a Street, the reference to Costs in clause 6.1.10 is a reference to the allowable costs of the measures needing to be taken in relation to that apparatus and which shall be borne by You and the DNO in the proportions prescribed by The Street Works (Sharing of Costs of Works) (England) Regulations 2000.
- 6.1.12. The DNO shall pay to You the price for the Additional Enhancement Works agreed pursuant to clause 2.3.11 within 30 days of the later of Adoption of such Additional Enhancement Works and receipt of an invoice for the same.

6.2. Variations to the Price.

The DNO may vary the Price:

6.2.1. If at the later of:

- (i) **The date of your acceptance of the Notice or the Estimate as the case may be; and**
- (ii) **The date upon which it places its order with its suppliers of materials or plant to be comprised in the DNO's Works,**

The price of those materials or plant shall have changed from those included in the Price, the Price may be varied by an amount equal to the increase or decrease (if any) in its suppliers' prices for such materials or plant to be comprised in the DNO's Works; and/or

- 6.2.2. **To reflect any change in the Exchange Rate between the date of the Letter and the Exchange Rate prevailing at the date upon which its bank transfers the currency to the payee for the goods and/or services comprised in or required for the DNO's Works; and/ or**

- 6.2.3. **If otherwise than solely because of its**

breach of this Notice or Estimate as the case may be, the DNO's Works have not been completed within twelve months of the date of your acceptance of the Notice or the Estimate as the case may be, the portion of the Price that may be increased is that which is referable to that part of the DNO's Works as has not been completed at each such twelve month anniversary disregarding that element of the Works which but solely for the DNO's breach of this Notice or Estimate as the case may be would have been completed before the relevant 12 month anniversary. The increased Price shall be calculated in accordance with the DNO's Connection Charge Methodology from time to time issued pursuant to the Licence; and/ or

6.2.4. In circumstances where:

a) any element of the Price is apportioned between You and/or a third party and/or the DNO; or

b) the DNO has otherwise incurred Costs in relation to providing your connection which have not been charged to You,

to take account of any change to the circumstances upon which such apportionment or such Costs were calculated including (without limitation) (i) a change arising from variation or termination of this Notice initiated by You, (ii) failure by You to take up or reserve the Capacity referred to in this Notice within 12 months of completion of the Works or (iii) the variation or termination of any relevant agreement with a third party; and/or

- 6.2.5. **In accordance with clause 4.6; and/or**

- 6.2.6. **Upwards or downwards as the case may be to reflect the DNO's Costs in connection with any relevant Lane Rental Scheme or similar that affects the carrying out of the DNO's Works to the extent that such Costs are not already included in the Price.**

6.3. Additional Costs

- 6.3.1. **If alterations to the design are required reasonably by the DNO otherwise than due to its want of reasonable skill and care the Cost of making those changes and any changes to the DNO's Works shall be borne by You.**

- 6.3.2. **The Costs of obtaining all Consents and the**

Land Rights required by the DNO lawfully to carry out and retain the DNO's Works shall be paid by You in accordance with clause 6.1.2 but in any event before Energisation.

6.3.3. If the DNO installs Electric Lines and/or Electrical Plant for itself and/or others in the Site at the same time as it carries out the Works, the Price of such part of the DNO's Works shall be apportioned as provided in its Connection Charge Methodology from time to time issued pursuant to the Licence.

7. Property in the DNO's Works

7.1. The DNO's Works shall form part of the Distribution System and shall be owned, operated and maintained by the DNO.

8. Testing and Adoption of Your Contestable Works

8.1. Testing

8.1.1. When Your Contestable Works are complete You shall provide to the DNO:

- (i) As-built drawings which comply with engineering instructions EI 09-0100 and EA00-0009;
- (ii) A Request to Test and Connect; and
- (iii) All other relevant information and documentation reasonably requested by the DNO.

8.1.2. Not less than 6 days following compliance with clause 8.1.1, subject to clause 3.2.1 and You having otherwise complied with the terms of the Notice, You shall carry out Your Tests in the presence of the DNO at a time agreed between the Parties.

8.1.3. If Your Contestable Works fail any of the Tests, the DNO may elect to:

- (i) Instruct You to carry out the required rectification works at Your cost;
- (ii) Complete the required rectification works; or
- (iii) If Energised, De-Energise the connection.

8.1.4. Where such failure is due to a fault in the DNO's Works, the DNO shall carry out any required rectification works at its expense.

8.1.5. You shall pay to the DNO its reasonable costs incurred in relation to any repeat Tests and abortive visits to the extent that such repeat Tests or abortive visits are not due to the DNO's default. The DNO shall pay Your reasonable costs of any repeat Tests or any abortive visits

to the extent that such Tests or abortive visits are due to the DNO's default.

8.1.6. The DNO shall not be liable for any delay, cost, expense or liability whatsoever resulting from any defect found in or for any repair required to Your Contestable Works unless such defect or lack of repair shall be directly attributable to its negligent act or omission and then only to the extent of such attribution.

8.1.7. Subject to:

- (i) The conditions precedent in clause 3.2 being satisfied;
- (ii) The DNO's Works having been completed; and
- (iii) Your Contestable Works having passed those Tests to be undertaken before Energisation of Your Contestable Works, the DNO shall Energise the Electric Lines and Electrical Plant comprised in Your Contestable Works for the purpose only of carrying out the DNO's Tests. Clause 8.1.3 shall apply in the event that any Tests fail.

8.1.8. Nothing in this clause 8 or in clause 2.3.10 above shall operate as an admission by the DNO that Your Contestable Works or any section thereof have been completed in accordance with the Notice or Estimate as the case may be or relieve You of any of Your liability or obligations under the Notice or Estimate as the case may be.

8.1.9. The DNO is not responsible for the adequacy or safety of Your Installation and nothing the DNO does or does not do constitutes any warranty, express or implied, as to the adequacy, safety or other characteristics of Your Installation.

8.2. Adoption

8.2.1. Following completion the Tests to the satisfaction of the DNO and subject to satisfaction of the conditions in clause 3.2, the DNO shall issue an Adoption Certificate.

8.2.2. The issue of an Adoption Certificate shall not operate as an admission by the DNO that Your Works have been completed in every respect or that they comply with all the requirements of this Notice or Estimate as the case may be and shall not relieve You of any of Your liability or obligations under the Notice or Estimate as the case may be.

8.2.3. The issue of the Adoption Certificate shall transfer to the DNO with Full Title Guarantee the Electric Lines and Electrical Plant comprised in Your Contestable Works.

8.2.4. Following Adoption, Your Contestable Works shall form part of the Distribution System and shall be owned, operated and maintained by the DNO.

9. Connection Point Energisation

- 9.1. You must not connect Your Installation to the Connection Point, Energise the Connection Point, or allow another person except the DNO to connect Your Installation to the Connection Point or to Energise the Connection Point on your behalf.
- 9.2. If You or any other person takes a supply of electricity through the Connection Point when not entitled to do so, the DNO reserves the right to De-Energise the Connection Point. You must pay to the DNO on demand the losses and the reasonable costs the DNO has suffered including if appropriate the costs of De-Energising and subsequently re-Energising the Connection Point.
- 9.3. If a Metering Point Administration Number (MPAN) is issued before the DNO shall have Adopted Your Contestable Works, all risks arising from a contract for the supply of electricity having been entered without Energisation lie entirely with You.

10. Defects Correction Period for Your Contestable Works

- 10.1. Following Adoption of Your Contestable Works, you shall not undertake any work on the Electric Lines and/or the Electrical Plant comprised in Your Contestable Works, and any costs properly incurred by the DNO in fault repair or rectification of defects associated with or caused by any such defect and/or fault with Your Contestable Works during the Defects Correction Period shall be paid by You to the DNO on an indemnity basis, within 21 days of receiving the invoice from the DNO.

11. Copyright of Documents

- 11.1. Each Party owns the copyright in all documents and data created or provided by it for use in connection with the DNO's Works, Your Works and Your Installation as the case may be and each Party hereby grants a non-exclusive, irrevocable, royalty free licence to the other

Party to use such documents and data solely for the purposes of performing their respective obligations under this Notice or Estimate as the case may be and in the case of the DNO for the purposes of owning, operating and maintaining its Distribution System. Except with the other Party's prior written consent neither Party shall make copies or permit copies of such documents or data to be made nor may the other Party use or permit those documents or that data to be used other than in accordance with this clause 11.1.

12. Force Majeure

- 12.1. The DNO may suspend the progress of the DNO's Works at any time owing to Force Majeure.
- 12.2. If suspension as a result of Force Majeure has continued for more than ninety (90) days You or the DNO may terminate the Notice or Estimate as the case may be, in which event clause 15.3 shall apply.
- 12.3. If following suspension under clause 12.1 the DNO proceeds with the Works, You must pay to the DNO, before the DNO resumes the DNO's Works, the Costs incurred as a result of the suspension.

13. Liability

- 13.1. **Save in respect of any fraudulent misrepresentation it has made or having caused the death of or personal injury to any person by its negligence (as to which in each case no limitation or exclusion of liability shall apply) and subject to clause 20.10:**
 - 13.1.1. **The DNO will be liable to You (and any third party) only for its negligent act or omission that causes delay in completing the DNO's Works and then only in the amount of the GS Payment paid or payable in relation to such delay (allowance being made therefrom in respect of any ex gratia payment paid or agreed to be paid) and in respect of physical damage only in a sum or sums that in the aggregate does not exceed the lower of the reasonable Cost of making good any physical damage caused by the DNO and the Price excluding Value Added Tax and after deducting therefrom any discount allowed by the DNO pursuant to the regulations referred to in clause 6; and**

- 13.1.2. The DNO will not be liable to You for any special, indirect or consequential damage or loss nor for any economic loss, loss of profit, loss of opportunity, loss of savings, loss of goodwill, loss of use, or any like losses.
- 13.2. If the only works to be carried out by the DNO are Diversions Works and they are otherwise unrelated to the making or modification of any connection to the Distribution System clause 13.1.1 shall not apply and subject to clauses 13.1 and 13.3, the DNO will not be liable to You (or any third party) for breach of these Terms and Conditions or any tortious (including negligent act or omission) or otherwise in a sum or sums that in the aggregate exceeds the Price excluding Value Added Tax.
- 13.3. Each of us shall be liable to the other for and shall indemnify the other against all claims in respect of personal injury or death arising from our respective negligence and that of our sub-contractors and their and our officers, employees, servants and agents.
- 13.4. Save where caused by the DNO's negligence, if the DNO shall receive any claim in respect of damage or injury to the Premises of a third party arising out of the execution of the Works, it shall report the claim to You who shall then negotiate the settlement of and pay all sums due in respect of such claim. You must indemnify the DNO in respect of the claim and in respect of all proceedings, damages, Costs, charges and expenses relating to such claim.
- 13.5. You shall indemnify and keep indemnified the DNO from all loss and/or damage as a result of the execution by You or on Your behalf of any Street Works and/or as a result of any explosion, ignition, discharge, or other event occurring to gas, electrical, water or any other thing required for the purposes of a supply or service afforded by a statutory undertaker (and any claims for such) made by any person.
- 13.6. Each of us shall be under a duty to take all necessary measures to mitigate the loss which has occurred provided that we can do so without unreasonable inconvenience or cost.
- 13.7. Set off.
- 13.7.1. The DNO shall be entitled but not obliged at any time or times without notice to You to set off any liability of You to the DNO against its liability to You (in either case howsoever arising and whether any such liability is present or future liquidation or un-liquidated). Any exercise by the DNO of its rights under this clause shall be without prejudice to any other rights or remedies available to the DNO under the Notice or Estimate as the case may be or otherwise.
14. Assignment
- 14.1. You may not assign or transfer the benefit of the Notice or Estimate as the case may be to anyone. The DNO may do so without your consent.
15. Termination
- 15.1. Either of us (the "Aggrieved Party") may (without prejudice to any other right or remedy) by written notice to the other (the "Defaulting Party") terminate the Notice or Estimate as the case may be with immediate effect if:
- 15.1.1. The Defaulting Party commits a breach of any of its obligations hereunder and fails to rectify the same (and notify the Aggrieved Party of such rectification) within fifteen (15) days of being notified thereof by the Aggrieved Party; or
- 15.1.2. The Defaulting Party: becomes bankrupt; makes any composition or arrangement with its creditors; has a proposal for a voluntary arrangement for a composition of debts or a scheme of arrangement approved in accordance with the Insolvency Act 1986; has an application made under the Insolvency Act 1986 in respect of itself to the Court for the appointment of an administrator; has a winding up order made or a resolution for a voluntary winding up passed; a receiver or manager of its business or undertaking is duly appointed; has an administrative receiver as defined in the Insolvency Act 1986 appointed; or possession is taken by or on behalf of any creditor of any property of the Defaulting Party.
- 15.2. You may terminate the Notice or Estimate as the case may be on written notice to the DNO, provided that at the date of the Notice or Estimate as the case may be the DNO's Works and any part of them are not intended

- to or do not subsequently form part of or comprise works to provide a connection to anyone other than You. If the DNO's Works at the date of the Notice or Estimate as the case may be are intended to or subsequently form part of or comprise works to provide a connection to anyone other than You the DNO may after consultation with You subsequently terminate the Notice or Estimate as the case may be as it sees fit by written notice to You with immediate effect if such other third party does not accept the notice or estimate issued to them by the DNO in connection with such works or any such notice is terminated.
- 15.3. Without prejudice to any antecedent breach of the Notice or Estimate as the case may be by the DNO, upon termination of the Notice or Estimate as the case may be by either of us, You shall pay to the DNO all undisputed sums then due and payable or accrued under or in connection with the Notice or Estimate as the case may be to the extent necessary to indemnify the DNO against the Costs it has reasonably incurred from the date that your application to carry out the Works was received in connection with the preparation and issuing of Notice or Estimate as the case may be and in carrying out the Works, including the Costs of materials or goods reasonably ordered for the Works prior to the date of termination.
- 15.4. If the DNO terminates the Notice or Estimate as the case may be in accordance with clause 15.1 or You terminate in accordance with clause 15.2, in addition to the payments provided above, You shall pay to the DNO the DNO's Costs of vacating the Site or in the case of a termination in accordance with clause 12.2 a reasonable proportion of the DNO's costs of vacating the Site.
- 15.5. The DNO may terminate the Notice at any time if any one or more of the statutory exceptions to the duty to connect set out in Section 17 of the Act shall apply.
- 15.6. The DNO may terminate the Notice with immediate effect if You change or vary the Generating Equipment or alter the nature of the Export Capacity.
- 15.7. Clauses 2.2.4, 2.5.3, 2.6.1, 2.6.2, 6, 7, 10, 11, 13, 15, 16, 17, 18, 19 and 22 shall survive termination of the Notice or Estimate as the case may be.
- 15.8. If the Notice or Estimate as the case may be is terminated for any reason the DNO shall be entitled to carry on and complete so much of the DNO's Works as it considers necessary to render the same stable and safe or to comply with any condition attaching to any Consent and/ or Land Right and to ensure that its Distribution System can operate not less effectively than before the commencement of the DNO's Works. The Cost properly incurred by the DNO in relation thereto shall be borne by You except where the Notice or Estimate as the case may be is terminated due to a breach by the DNO.
16. Notices
- 16.1. Any notice or consent given under the Notice or Estimate as the case may be shall have been properly given only if in legible writing and sent by first class prepaid letter post, by hand, or by facsimile transmission to the address of the Party to be served specified in the Notice or Estimate as the case may be or in either case to such other address as has been given to that other in accordance with this clause 16.
- 16.2. Any notice given by post shall be deemed to have been given two working days after it was sent and a notice delivered by hand or by facsimile transmission shall be deemed to be served upon actual delivery or transmission.
17. Law
- 17.1. The Notice or Estimate as the case may be shall be governed by and construed in accordance with the law of England and Wales.
18. Entire Agreement
- 18.1. The Notice or Estimate as the case may be is the entire agreement between us and replaces all previous correspondence and any previous understanding between us. Neither of us has entered the Notice or Estimate as the case may be in reliance on any statement that is not set out fully in the Notice or Estimate as the case may be. Nothing in this clause shall exclude liability for fraud.
19. Non-Waiver
- 19.1. None of the provisions of the Notice or Estimate

Terms and Conditions

- as the case may be shall be considered waived by either of us except when such waiver is expressly given in writing.
- 19.2. No delay by act or omission by either of us in exercising any right power privilege or remedy under the Notice or Estimate as the case may be shall impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right power privilege or remedy shall not preclude any other future exercise thereof or the exercise of any other right power privilege or remedy.
- 20. Reservation of Capacity**
- 20.1. You may (but are not obliged to) Reserve the Outstanding Capacity as an integer in kVA on the Distribution System in accordance with the provisions of this clause 20.
- 20.2. The right to Reserve Outstanding Capacity is conditional upon:
- 20.2.1. You agreeing as part of the Works to the installation of and the payment to the DNO of the Costs of measurement capability to allow the Outstanding Capacity to be determined in accordance with this Notice;
- 20.2.2. The Works not being only Diversionary Works; and
- 20.2.3. Either the Works being for a Speculative Development or You or a third party has not entered into an agreement with a supplier of electricity in connection with the Connection Point.
- 20.3. To Reserve the Outstanding Capacity on the Distribution System You must send the Reservation Application with a copy of the Notice to the DNO at the Reservation Application Address:
- 20.3.1. For reservation during the Initial Reservation Period, not more than four nor less than two calendar months before the start of the Initial Reservation Period; and
- 20.3.2. For reservation during each Subsequent Reservation Period, not more than four nor less than two calendar months before the end of the Initial Reservation Period or the preceding Subsequent Reservation Period (as the case may be).
- 20.4. Within twenty-one days of its receipt of the Reservation Application the DNO shall give You the Reservation Information.
- 20.5. Following Your receipt of the Reservation Information, if You wish to Reserve the Outstanding Capacity or part thereof upon the Distribution System for use at the Connection Point for the Initial Reservation Period or the relevant Subsequent Reservation Period (as the case may be) You must send the Reservation Confirmation to the DNO at the Reservation Application Address within ten days of your receipt of the Reservation Information and at that time pay to the DNO the corresponding Reservation Fee referable to that portion of the Outstanding Capacity that You wish to reserve.
- 20.6. Upon receipt of the Reservation Confirmation and full payment the Reservation Fee in cleared funds the DNO will Reserve that part of the Outstanding Capacity that you have paid to reserve by payment of the Reservation Fee for the Initial Reservation Period or the relevant Subsequent Reservation Period only.
- 20.7. You cannot Reserve any Outstanding Capacity upon the Distribution System for use at the Connection Point in an amount greater than the lesser of the:
- 20.7.1. Capacity reserved by You in the Initial Reservation Period; or
- 20.7.2. Capacity reserved in the immediately preceding Subsequent Reservation Period.
- 20.8. Where an amount of Outstanding Capacity is not Reserved for the Initial Reservation period or the relevant Subsequent Reservation Period (as the case may be) this clause 20 shall cease to apply and You shall have no further right to Reserve such Capacity under this Notice.
- 20.9. Time is of the essence for the purposes of this clause 20.
- 20.10. Save in respect of any fraudulent misrepresentation it has made or having caused the death of or personal injury to any person by negligence (as to which in each case no limitation or exclusion of liability shall apply), the DNO's liability to You for breach of its obligations under this clause 20 (including negligence) to Reserve Outstanding Capacity pursuant to a notice under clause 20.3 is limited to an amount calculated as:

$$\frac{\text{Price x CY}}{\text{Capacity}} = \text{The DNOs liability pursuant to this clause 20.10}$$

Where, CY is the capacity no longer available. The capacity that is no longer available is the lesser of the Capacity that You have Reserved in the relevant Reservation Period less the Capacity that DNO has provided to You for that Reservation Period.

- 20.11. If You or a third party require a Connection at the Connection Point the DNO will require such party to enter into the Connection Agreement.

21. Export Connections

- 21.1. Where this Notice is to provide You with a Connection Point with Export Capacity the following conditions shall apply:
 - 21.1.1. You shall not be entitled to operate the Generating Equipment unless the Generating Equipment has been commissioned in accordance with the requirements of the Energy Networks Association Engineering Recommendation G59 (as amended or updated from time to time) and a relay test has been conducted and signed off by the DNO’s nominated witness;
 - 21.1.2. It shall be a condition of the Connection Agreement that you must operate the Generating Equipment at Unity Power Factor, unless otherwise requested by the DNO.
 - 21.1.3. You shall not be entitled to change or vary the Generating Equipment or alter the nature of the Export Capacity under this Notice.

22. No Liability for Forecasts

- 22.1. The provider of the Forecast aims to ensure that the Forecast is accurate and consistent with current knowledge and practice. However forecasting of dynamic social, economic, climatic and electrical environments are inexact sciences which are constantly evolving and therefore no element of the Forecast whatsoever may be relied upon. Subject to clause 13 the provider of the Forecast and any party on behalf of whom the Forecast is provided excludes all liability in tort (including negligence), contract and under any statute for any loss or damage arising out of or in connection with any reliance on the Forecast. Subject to the foregoing, to the fullest extent permitted by applicable law, all warranties or representations (express or implied) in respect of the Forecasts are excluded.
- 22.2. Your use of Forecasts provided by or on behalf

of the DNO is entirely at Your own risk. The DNO makes no warranty, representation or guarantee that the Forecast is error free or fit for Your intended use.

23. Reference to Ofgem

- 23.1. If You have followed the DNO’s complaints procedure available at www.ukpowernetworks.co.uk (navigate to Contact Us then click on the Complaints tab) and You are unable to resolve a dispute about the DNO’s duty to connect and the conditions under which that duty is discharged (sections 16-21 of the Act) You have the right to contact the Energy Ombudsman which is the independent ombudsman for gas and electricity consumers. The Energy Ombudsman’s contact details are provided below:

Telephone: 0330 440 1624
 Fax: 0330 440 1625
 Email: osenquiries@os-energy.org
 Website: www.energy-ombudsman.org.uk
 Ombudsman Services: Energy
 PO Box 966
 Warrington WA4 9DF

- 23.2. In addition, You can refer the dispute to the Gas and Electricity Markets Authority (known as Ofgem) within twelve months of the date on which your connection was made to our Distribution System. Ofgem will require that You give the DNO and the Energy Ombudsman an adequate opportunity to resolve any complaint or dispute before any action is taken by them. Ofgem’s decision will be enforceable as if it were a judgement of the Court and will include such provisions as it considers appropriate which may include who pays its costs in determining the dispute. Ofgem may give directions to us as to the terms on which we are to make or maintain a connection pending determination of the dispute.

Ofgem can be contacted at:
 9 Millbank,
 London
 SW1P 3GE
 or via their website www.ofgem.gov.uk

If You have concerns that cannot be resolved with your normal point of contact in relation to the works, please contact:

Customer Relations, UK Power Networks,
Fore Hamlet, Ipswich IP3 8AA

Tel: 0800 028 4587

Email: customer.relations@ukpowernetworks.co.uk

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Registered number: 3870728 registered in England and Wales

